S.B.CIVIL WRIT PETITION NO.7477/2007
(Ram Bux Choudhary Vs. The State of Rajasthan & ors.)

Date of order : 6th December 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.P.S.Chundawat for the petitioner.

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BY THE COURT:

By way of this writ petition, the petitioner, working on the post of Teacher Gr.III seeks to question the order dated 05.10.2007 (Annex.1) whereby he has been transferred from Government Primary School (Boys), Barsinghsar, Bikaner to Government Upper Primary School, Dhupaliya, Nokha and the order dated 15.10.2007 (Annex.2) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.2363/2007) against the said transfer order.

It has essentially been contended that the petitioner has been transferred without any administrative exigency and without application of mind; and that the State Government is not competent to pass such transfer order, which could be made only by the Panchayat Samiti concerned on the recommendations of the District Establishment Committee and in consultation with the Pradhans of two Panchayat Samitis wherefrom and whereto the employee is sought to be transferred.

It has also been contended that transfer order has been issued only in order to accommodate the respondent No.4 and is, thus, liable to be set aside; and that the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner.

So far the submissions regarding competence of the State Government to issue such order transferring an employee from one Panchayat Samiti to another are concerned, the same stand concluded against the petitioner for the view taken by this Court on 19th November 2007 in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors) and in another case, CWP No.7374/2007 (Meena Sharma Vs. State of Rajasthan & Ors.). While rejecting similar nature contentions against competence of the State Government to issue such transfer orders, this court has observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other

> authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.
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> A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.
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> As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

In view of the decision aforesaid, the contentions against competence of the State Government to issue the order of transfer of the petitioner from one Panchayat Samiti to another deserve to be rejected.

The Tribunal has, thus, not committed any error or illegality in rejecting the submissions as made in this case on behalf of the petitioner.

So far accommodation of respondent No.4 is concerned, it does not appear that such a ground was distinctly set forth before the Tribunal concerned. In any event, such a ground is hardly of any substance and the transfer order does not appear vitiated on any such ground. As observed by the Hon'ble Supreme Court in Shilpi Bose Vs. State of Bihar: AIR 1991 SC 532, even the order of transfer made for the purpose of accommodating another employee cannot be termed illegal or invalid on that count alone. In the case of Shilpi Bose (supra), the Hon'ble Supreme Court said,-

> "If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer order were passed on the request of the employees concerned."

The petition fails and is, therefore, rejected.

MK **(DINESH MAHESHWARI),J.**